

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

OWENS & MINOR, INC. and OWENS &
MINOR FLEXIBLE BENEFITS PLAN,

Plaintiffs,

v.

ANTHEM HEALTH PLANS OF VIRGINIA,
INC. D/B/A ANTHEM BLUE CROSS AND
BLUE SHIELD,

Defendant.

Civil Action No.: 3:24-cv-00820

**STIPULATION REGARDING NON-PARTY BLUE CROSS BLUE SHIELD
ASSOCIATION'S POTENTIAL MOTION TO INTERVENE AS A
DEFENDANT FOR THE LIMITED PURPOSE OF DEFENDING AGAINST
PLAINTIFFS' CLAIMS REGARDING CERTAIN BLUE SYSTEM RULES**

This matter comes before the Court on the stipulation of counsel, as evidenced by their respective signatures below.

WHEREAS, Plaintiffs Owens & Minor, Inc. and Owens & Minor Flexible Benefits Plan (collectively "OMI") filed the operative First Amended Complaint ("Complaint") in the above-captioned action ("Action") on February 7, 2025;

WHEREAS, non-Party Blue Cross Blue Shield Association ("BCBSA") contends that OMI's allegations in the Complaint relate to the BlueCard Program ("BlueCard"), as well as the System of Exclusive Service Areas ("ESAs") described in BCBSA's license agreements with its licensees, and that BCBSA may intervene as a party-defendant in this Action on those grounds;

WHEREAS, OMI acknowledges but disagrees with BCBSA's contention that OMI's allegations entitle BCBSA to intervene;

WHEREAS, on February 28, 2025, Anthem filed a motion to dismiss the Complaint (Dkt. 34) (“Motion To Dismiss”) and an answer (Dkt. 35) in the Action; among other things, the Motion To Dismiss alleges that “OMI has released, in the Blue Antitrust Subscriber MDL, *In re Blue Cross Blue Shield Antitrust Litigation*, MDL 13-2000 (N.D. Ala.), any claim for liability or damages against Anthem related to BlueCard fees” through OMI’s participation in a settlement of that action (hereinafter the “Subscriber Settlement”) (Dkt. 34 at 17 n.15);

WHEREAS, the parties to the Subscriber Settlement “have submitted to the exclusive jurisdiction of th[e MDL] court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement . . . including but not limited to enforcement regarding Released Claims” (MDL Dkt. 2931 at 90);

WHEREAS, on March 13, 2025, Anthem filed with the MDL Court a Motion to Enforce the Court’s Injunction Regarding Subscriber Class Member’s Released Claims (“Motion To Enforce”) (MDL Dkt. 3289), arguing OMI released certain claims asserted in the Complaint related to BlueCard and ESAs in connection with the Subscriber Settlement (the “Blue System Claims”);

WHEREAS, on March 31, 2025, OMI filed its opposition to the Motion To Enforce, arguing the Blue System Claims were not released through the Subscriber Settlement (MDL Dkt. 3299);

WHEREAS, Anthem filed its reply in support of the Motion To Enforce on April 10, 2025 (MDL Dkt. 3305), and the Motion To Enforce is now fully briefed and pending before the MDL Court;

WHEREAS, BCBSA wishes to file a motion to intervene in this Action as a Defendant for the limited purpose of defending against the Blue System Claims, in the event such claims are permitted to proceed, but such motion may be rendered unnecessary by the MDL Court’s resolution of Anthem’s Motion To Enforce;

WHEREAS, OMI disagrees with BCBSA as to the merits of intervention and, in the event BCBSA files a motion to intervene, OMI will oppose it;

WHEREAS, in the interests of judicial economy and efficiency for the parties and the Court, BCBSA and OMI agree that the parties should wait until the MDL Court's decision on Anthem's Motion To Enforce before burdening this Court with potentially unnecessary motion practice;

NOW, THEREFORE, THE PARTIES HERETO AGREE AND STIPULATE AS FOLLOWS:

1. In the interest of efficiency, BCBSA shall wait to file any motion to intervene in this Action until after the MDL Court rules on Anthem's Motion To Enforce;
2. BCBSA's motion to intervene in this Action shall be due no later than seven calendar days following the MDL Court's ruling on Anthem's Motion To Enforce;
3. No party shall oppose the motion to intervene on the grounds that it was untimely by virtue of awaiting the MDL Court's ruling on Anthem's Motion to Enforce, provided that all other grounds for opposition to BCBSA's motion to intervene are preserved and may be asserted at the appropriate time; and
4. If, following the MDL Court's decision on Anthem's Motion to Enforce, BCBSA determines not to file any motion to intervene, it shall inform the parties and this Court promptly.

Dated: April 22, 2025

Stipulated by:

<p><u>/s/ Jeffrey A. Rosen</u> Jeffrey A. Rosen (VA Bar No. 98733) Karin A. DeMasi (<i>pro hac application forthcoming</i>) Lauren R. Kennedy (<i>pro hac application forthcoming</i>) CRAVATH, SWAINE & MOORE LLP Two Manhattan West 375 Ninth Avenue New York, NY 10001 Tel: (212) 474-1000 jrosen@cravath.com kdemasi@cravath.com lkennedy@cravath.com</p> <p><i>Attorneys for non-Party Blue Cross Blue Shield Association</i></p>	<p><u>/s/ Seth Carroll</u> Seth Carroll (VSB No. 74745) Matthew Lastrapes (VSB No. 84097) COMMONWEALTH LAW GROUP 3311 West Broad Street Richmond, VA 23230 Phone: (804) 551-9650 Facsimile: (866) 238-6415 scarroll@hurtinva.com mlastrapes@hurtinva.com</p> <p>W. Mark Lanier (<i>pro hac vice</i>) Texas State Bar No. 11934600 Benjamin Major (<i>pro hac vice</i>) Texas State Bar No. 24074639 Ryan D. Ellis (<i>pro hac vice</i>) Texas State Bar No. 24087470 Julian Cokic (<i>pro hac vice</i>) Texas State Bar No. 24118977 THE LANIER LAW FIRM, P.C. 10940 W. Sam Houston Pkwy N. Suite 100 Houston, Texas 77064 Telephone: (713) 659-5200 Facsimile: (713) 659-2204 WML@lanierlawfirm.com Ben.Major@lanierlawfirm.com Ryan.Ellis@lanierlawfirm.com Julian.Cokic@lanierlawfirm.com</p> <p>Frank Gallucci (<i>pro hac vice</i>) PLEVIN AND GALLUCCI CO., LPA Ohio State Bar No. 72680 55 Public Square Suite 2222 Cleveland, Ohio 44113 Telephone: (216) 861-0804 Facsimile: (216) 861-5322 FGallucci@pglawyer.com</p> <p><i>Counsel for Plaintiffs Owens & Minor, Inc. and Owens & Minor Flexible Benefits Plan</i></p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------